

Message Text

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SUBJ: JUDICIARY-EXECUTIVE RELATIONSHIP

REF: A) SANTIAGO 0956 B) SANTIAGO 1351

1. SUMMARY: THE CIVIL JUDICIARY TWICE MORE HAS TAKEN POSITIONS IMPLICITLY CRITICAL OF THE EXECUTIVE'S CONDUCT OF AFFAIRS. PARTICULARLY IN THE CASE OF AN OFFICIAL SPEECH BY THE SUPREME COURT PRESIDENT, THE EXAMPLES STRENGTHEN OUR BELIEF THAT THERE IS A SHIFT IN THE JUDICIARY'S ATTITUDE TOWARD THE GOVERNMENT AND ITS WILLINGNESS TO ASSERT ITSELF. END SUMMARY.

2. SUPREME COURT: COURT PRESIDENT EYZAGUIRRE'S ANNUAL REPORT AT THE BEGINNING OF THE JUDICIAL YEAR MARCH 1 CONCERNED MOSTLY ADMINISTRATIVE MATTERS. BUT HIS SUBSTANTIVE COMMENTS INCLUDED THE FOLLOWING POINTS OF INTEREST:

A) HE IMPLICITLY INDICATED THAT IN HIS VISITS TO DETENTION CAMPS UNDER SUPREME DECREE 187 OF JANUARY 1976 (76 SANTIAGO 3457), HE HAD FOUND IRREGULARITIES THAT HAD TO BE CORRECTED. THIS IS AS CLOSE AS EYZAGUIRRE HAS COME TO A PUBLIC STATEMENT TO THAT EFFECT.

B) HE PRAISED THE CONSTITUTIONAL ACTS (TWO, THREE AND FOUR) PRO-

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MULGATED IN SEPT 1976, BUT INDICATED SOME PROBLEMS. HE PLACED PARTICULAR IMPORTANCE ON THE NEW "RIGHT OF PROTECTION" (76SANTIAGO A-144), WHICH PROVIDES THE CITIZEN WITH THE RIGHT TO JUDICIAL RECOURSE IN CASES OF SOME ABUSES NOT COVERED BY HABEAS CORPUS. BUT, HE EXPRESSED HS CONCERN THAT THIS RIGHT OF PROTECTION HAD BEEN RESTRICTED, "IN A BROAD AND RATHER VAGUE WAY," DURING PERIODS OF EMERGENCY (SANTIAGO A-24).

C) EYZAGUIRRE POINTEDLY SAID THAT THE CITIZEN CANNOT BE DEFENSELESS AGAINST ABUSES OR ARBITRARY ACTS OF THE EXECUTIVE, WHICH MUST SUBMIT ITSELF TO THE JURISDICTION OF THE TRIBUNALS. AND HE ADDED A QUOTE FROM A SENIOR BRITISH JUDGE TO THE EFFECT THAT NO MATTER HOW HIGH RANKING A CITIZEN, HE MUST ALWAYS COME UNDER THE RULE OF LAW. AN OBSERVANT CHILEAN WOULD SEE THE RELEVANCE OF THIS DICTUM.

D) FINALLY, EYZAGUIRRE IMPLICITLY CRITICIZED THE BROADENING OF PRESIDENTIAL POWER UNDER STATES OF EMERGENCY INTRODUCED BY CONSTITUTIONAL ACT NO. FOUR. HIS POINT WAS THAT A FUTURE GOVERNMENT COULD ABUSE SUCH POWERS IN ORDER TO WEAKEN ESSENTIAL GUARANTEES INHERENT IN ANY SYSTEM OF LAW. "NO ONE CAN QUESTION THE LAUDABLE IDEA OF ASSURING INTERNAL PEACE AND PUBLIC ORDER," SO GRAVELY THREATENED IN THIS TIME, "BUT EXPERIENCE SHOWS THAT LEGISLATION WRITTEN IN THE BEST FAITH AND INTENTION" CAN BE MISUSED. THIS CONCERN AS EXPRESSED IS FOR THE FUTURE,BUT EYZAGUIRRE' POINT HOLDS ALSO FOR THE PRESENT.

3. APPEALS COURT RULING ON THE DISAPPEARED THIRTEEN: THE FAMILIES OF THE PERSONS, MOSTLY COMMUNISTS, WHO DISAPPEARED IN DECEMBER HAVE APPEALED THE DECISION OF THE SPECIAL JUDGE WHO CLOSED HIS INVESTIGATION AFTER THE GOC HAD PRODUCED DOCUMENTATION SHOWING THAT THE EIGHT IN QUESTION HAD LEFT CHILE (REF B). A THREE-JUDGE CHAMBER OF THE SANTIAGO APPEALS COURT MARCH 1 REJECTED THE APPEAL ON PROCEDURAL GROUNDS, BUT THEN RULED THAT THE SPECIAL JUDGE MUST REOPEN THE INVESTIGATION IMMEDIATELY. THE CHAMBER NOTED THAT ANY SUCH JUDGE HAD TO CARRY OUT A "MINIMUM OF LIMITED OFFICIAL USE

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ESSENTIAL AND PERTINENT INVESTIGATIONS." THE IMPLICATION OF THE COURT DECISION IS THAT THE SPECIAL JUDGE ACCEPTED TOO READILY THE GOC'S ASSERTIONS THAT THE "DISAPPEARED" HAD LEFT CHILE FOR ARGENTINA.

4. COMMENT: THE EMBASSY IS IMPRESSED WITH THESE EVENTS. IN SPECIFIC CASES, EYZAGUIRRE HAS LITTLE INFLUENCE ON A COURT, BUT HE IS BASICALLY PRO-GOVERNMENT, DOES NOT LIGHTLY GO AGAINST IT, AND HIS TAKING OF POSITION CAN HEARTEN OTHERS. IN THE CASE OF THE DISAPPEARED, A SPECIAL JUDGE SMARTING FROM THE COURT'S UNANIMOUS REBUKE MAY BE MORE ASIDUOUS IN LOOKING INTO THE CASE. WE DO NOT WISH TO EXAGGERATE THESE EVENTS, BUT IT APPEARS THAT THE JUDICIARY IS BECOMING SOMEWHAT MORE WILLING TO CONFRONT THE EXECUTIVE (REF A). TWO OTHER DECISIONS ARE PENDING BEFORE THE JUDICIARY THIS WEEK: RADIO BALMACEDA'S APPEAL OF ITS CLOSURE (SANTIAGO 1392), AND THE FAILURE OF THE GOC TO RELEASE YOUNG COMMUNIST CARLOS CONTRERAS (SANTIAGO 1334), AS REQUIRED BY THE APPEALS COURT, EVEN THOUGH THE GOC HAS DENIED DETAINING HIM.
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